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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,699	09/18/2003	John Leary	ADAMSRI.031A	4708
20995	7590	12/03/2009	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PASCHALL, MARK H	
		ART UNIT	PAPER NUMBER	
		3742		
		NOTIFICATION DATE	DELIVERY MODE	
		12/03/2009	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* JOHN LEARY, THOMAS J. SIEVERS, RUTH LI,  
KEVIN MCHENRY, DANE IMMEL and TJ DEJONG

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Application No. 10/664,699  
Technology Center 3700

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Mailed: December 2, 2009

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Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team.*

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received by the Board of Patent Appeals and Interferences on August 10, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION**

The Examiner relied on the foreign reference(s) EP 350453 A1 in rejecting the claims. Full certified English translation(s) of the above noted foreign reference(s) are not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

## CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to obtain full certified English language translation for the EP 350453 reference; and
- 2) to complete the IFW by having the translation obtained scanned into the IFW file; and
- 3) to provide copies of the translations obtained to Appellant(s); and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/dw

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